United States Court of Appeals

FOR THE NINTH CIRCUIT

No. 13011

REPLY BRIEF FOR PETITIONERS.

BERNICE FEITLER and IRWIN FEITLER,
Individually and Trading as
Gardner & Company,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

PETITION TO REVIEW AN ORDER OF
THE FEDERAL TRADE COMMISSION

PETITIONERS' ASSIGNMENT OF ERROR THAT "THE HEARING GRANTED PETITIONERS HEREIN DID NOT COMPLY WITH THE DUE PROCESS CLAUSE OF THE CONSTITUTION NOR WITH THE ADMINISTRATIVE PRACTICES ACT" IS PROPERLY RAISED BY THE PETITIONERS' STATEMENT OF POINT.

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There is no merit to the Commission's contention that the petitioners' assignment of error that "they did not have a fair hearing" is not properly raised by the statement of points. This assignment of error comes clearly and squarely within petitioners' statement of point No. 8 which is as follows (Tr. 93)

> "The Commission erred in denying petitioners' motion, filed July 5th, 1951, to set aside the said order."

This statement of point properly raises this assignment of error because the first and main point relied upon by the petitioners to sustain this motion is "that by virtue of the following ruling made and adhered to herein by the Trial Examiner respondents (petitioners here) were not given a fair and an impartial hearing." (Tr. 33)

To show that this assignment is properly raised by the statement of points we quote the following from the said motion which appears on page 33 of the printed record:

> "The following discussion is a presentation of the reasons and facts upon which the respondents rely to substantiate this motion. Respondents' first contention is that by virtue of the following ruling made and adhered to herein by the Trial Examiner respondents were not given a fair and an impartial hearing. The ruling is as follows:"

It is fundamental that when the denying of a motion is set out as one of the "statement of points" any and every point relied upon in support of the motion is a proper assignment of error. Under the circumstances of this case, there is no basis upon which the Commission's claim that "This assignment of error calls for new matter, requiring entirely different factual consideration and involving completely different principles of law from any of the points upon which petitioners stated they intend to rely." (Brief page 5).

As statement of fact No. 8 is based upon the denying of the motion which motion in turn is based upon the ground that the hearing granted the petitioners was not a fair and impartial hearing, it is self evident that if the assignment of error read "The Commission erred in denying

petitioners' motion" the argument under this wording would be identical with the argument under the assignment as it is worded. In other words, the statement of point No. 8 gave ample notice to the Commission that petitioners would present to this court the proposition that their constitutional right of due process had been violated.

In addition, the following will show that the Commission was adequately advised that the petitioners would present to this Court the contention that their constitutional right of due process had been violated. The Commission's order in denying said motion. (Tr. R. 62) shows that the petitioners presented in both the brief and oral argument submitted to and argued before the Commissioners the proposition that the hearing granted them violated the due process clause. Petitioners, realizing that the brief filed with the Commissioners and the oral argument before them would not be a part of the record herein, filed the said motion July 5th in order to have it appear affirmatively in the record that this point and contention had been submitted squarely and specifically to the Commissioners and that they had ruled adversely upon it.

The Commission admits in its brief that this contention is based upon the Commission's order denying petitioners' said motion. We quote from page 8 of respondents' brief:

> "Petitioners' contentions here * * * are based upon the order of the Commission denying the motion to set aside the Commission's order filed by petitioners in 1951."

As the Commission admits that this contention is based upon the order denying the motion and as petitioners' statement of point No. 8 is that Commission erred in denying the motion, it is self evident that the question of due

process of law is properly raised by the statement of points.

The Printed Record Contains Sufficient Parts of the Record to Present Every Point Argued by Petitioners.

The Commission makes the further contention that the printed record does not contain enough of the record to present this contention. There is no merit to this contention because every essential part of the record necessary to the presentation of this contention is a part of the printed record. In this contention the Commission has a misunderstanding of petitioners' position. The petitioners are not relying upon any particular ruling denying the admission of evidence or the striking of any evidence; their complaint is based upon the fact that they continuously during the periods in which the hearings were conducted asked for hearings to be set at certain places and that each time such requests were presented the Trial Examiner denied the request and refused to grant hearings except in places wherein the Commission had held hearings and continued to rule that the only evidence that he would permit the petitioners to introduce would be evidence which tended to disprove the evidence introduced by the Commission. The printed record contains all of the evidence and parts of the record bearing upon this point.

It is admitted by the Commission in its brief p. 7 that the petitioners are entitled to a hearing in which they have the "*right to a full opportunity to introduce evidence in rebuttal and the right to be heard.*" In addition to this admission by the Commission, the administrative procedure act provides that the hearing granted must be such that the petitioners are given a full and complete opportunity to introduce their evidence so that there is a complete and full disclosure of the facts.

Petitioners' point is that by virtue of the Trial Examiner confining the hearing exclusively to places and locations wherein the Commission held hearings and ruling that the only evidence admissible is evidence that would tend to disprove the Commission's evidence, the petitioners were not granted the opportunity to introduce evidence in rebuttal and also that the petitioners were not allowed the opportunity to introduce their evidence so that there would be a full and complete disclosure of the facts.

In addition the Commission contends that petitioners' discussion on page 13 of their brief that, "The interstate shipment of punch boards is not a practice deemed undesirable by Congress" is a point which is not raised by either the assignments of error or the statement of points. The Commission is in error in this contention because the discussion is not of any point other than a point raised in a cited case. In other words, the petitioners are only discussing a statement made in the *Lichtenstein* Case to show that that case is not applicable to the present case, therefore, it is not a point that must be raised by assignment of error or statement of point. The same is true of petitioners' argument commencing on page 16. This last point is also presented on the basis that if the petitioners were allowed to introduce their evidence said evidence would disprove a premise upon which this Court in the *Lichtenstein* case predicated that decision.

All that is necessary to be in the record to raise these points is the fact that the Examiner made this ruling, the request made by the petitioners for hearings and the ruling showing that the hearings were confined to the places wherein the Commission held hearings, all of which is contained in the printed record. Therefore, there is no merit to the Commission's contention that the petitioners did not comply with rule 19 of this court's rules.

In concluding this contention it is self evident from the above, that the question of due process of law is properly before this court.

The Facts Which Petitioners' Proffered Evidence Would Establish Are Material, Competent and Relevant to the Issues Herein.

The Commission makes the contention that granting that this point is properly before the court, that there is no merit to the contention because first the facts which petitioners wish to prove are incompetent, irrelevant and immaterial to the issues involved herein, and the further contention that this case is controlled by the case of *Charles A. Brewer & Sons* v. *F.T.C.,* 158 F. 2d 74 (C.A. 6, 1946); and the case of *Lichtenstein, et al.* v. *F.T.C.,* 194 F. 2d 607 (C.A. 9, 1952). The following discussion will establish that the Commission's contention that the facts which the petitioners wish to establish by their proffered evidence are incompetent, irrelevant and immaterial is contrary to and in direct conflict with the *Brewer* and the *Lichtenstein* Cases.

Let us first discuss the *Brewer* Case to show that this contention of the Commission is in conflict with this case. The Sixth Circuit Court in the *Brewer* Case set out the following:

> "In its findings, the Commission asserted that many retail dealers do not make use of lotteries or games of chance in the sale or distribution of merchandise, and that many manufacturers of and wholesale dealers in merchandise do not supply to their retailers the means of conducting lotteries. In consequence of the popular appeal of games of chance, much trade is diverted from these dealers, manufacturers and wholesalers, to competitors who do not supply such lotteries or games of chance.

> The final finding of the Federal Trade Commission stated: 'The practice of respondents (petitioners here) in selling and distributing their lottery devices thus serves to place in the hands of others means and instrumentalities whereby they are enabled to use unfair methods of competition and thereby unfairly to divert substantial trade to themselves from those who do not use such methods.' ''

The Court further says,

> ''In our view, all the findings of fact of the Federal Trade Commission are supported by evidence, disclosed in the record."

To emphasize the importance of having the Commission make the above findings, and that the findings are adequately supported by the evidence, the Court in a footnote sets out portions of the evidence.

From the above it is beyond controversy that the *Brewer* Case held that the Commission has the burden to prove by competent, relevant and material evidence the facts as herein above set out; the converse of which is that the petitioners have the right to disprove these facts. On this point the Commission admits that the proffered evidence is competent, relevant and material to sustain the facts but its contention is that the facts are immaterial; on this point on page 9 of its brief the Commission said:

> ''We believe that for simplicity and clarity the questions actually presented can be stated as follows:
>
> (1) Does the Federal Trade Commission have jurisdiction to prohibit the sale and distribution in interstate commerce of lottery devices designed and arranged for the purpose of enabling others to sell merchandise by means of a game of chance, gift enterprise, or lottery?"

In contrast to this contention the petitioners contend, as the following argument will show, that that the law on

this point as announced by the *Keppel* and *Brewer* Cases is, the Commission has power to issue a Cease and Desist Order to restrain the aiding and abetting, inducing and procuring manufacturers and wholesale and retail dealers in merchandise to use unfair and deceptive acts and practices and unfair methods of competition and that the only cases wherein the use of punch boards constitutes such unfairness are cases wherein the *"evidence"* establishes the facts that the said use of the said punch boards places *"competitors in a position where they are compelled to adopt a method which they are under a powerful moral compulsion not to adopt or lose a substantial volume of business."* Therefore, the petitioners' contention is that this contention made by the Commission is contrary to the holding in the *Brewer* Case. The *Brewer* Case holds definitely and unequivocally that before the Commission has power or authority to prohibit the interstate shipment of lottery devices the Commission must establish, as we have set out above, the facts which the Court enumerated in its opinion; as we have said, the converse is that if the petitioners can prove that such facts do not exist the Commission has no authority or jurisdiction to restrain the petitioners from shipping their punch boards in interstate commerce.

In this connection it is fundamental that the petitioners are not bound by any findings the Commission made in the *Brewer* Case; they have a constitutional right to introduce their evidence to establish the essential facts before the fact finding body. It is further fundamental that as to facts, the Commission nor a court has no power to settle the facts in a case as a matter of law thereby depriving other litigants from the right to introduce evidence to show that the facts in their case are different than what

the Commission has previously ruled in a case wherein the evidence was entirely different than that which the petitioners wish to introduce. In other words, the facts set out in the footnote in the *Brewer* case are based upon an advertisement and are absolutely ridiculous; the petitioners' testimony will prove that there is absolutely not an iota of truth in any one of them. It would be outrageous to hold that these petitioners are bound by some silly assinine advertisement issued by Brewer. In other words to hold in this case that the *Brewer* case holds that the only point at issue herein is, that the Commission has power to prevent "the distribution in interstate commerce of lottery devices which are to be used in the intrastate distribution of merchandise," would amount to holding that these petitioners are bound by the evidence introduced in the *Brewer* Case which includes the said advertisement. The injustice of such a ruling is made apparent by the fact that Brewer did not raise the question or introduce evidence on the point that the petitioners are now presenting; that is, it would be an injustice to hold that the petitioners are now precluded from proving certain facts because Brewer did not see fit to introduce evidence to establish the facts which the petitioners wish to prove.

In discussing the *Lichtenstein* Case, the petitioners assume that the decision by this Court therein is based upon the proposition that before the Commission would have jurisdiction to issue a Cease and Desist Order, as the one issued herein, it must appear by competent, relevant and material evidence that the intrastate use of punch boards to distribute merchandise is a pestilence *entering every dwelling, reaching every class, preying upon and plundering the ignorant and simple and is spreading into line after line of merchandising."*

In the *Lichtenstein* Case this Court relied upon public law 906, 81st. Cong. 2d Sess., approved January 2nd, 1951. Before the application of this law is applied to a case it is very important that the case comes clearly, strictly and unequivocally within the holding in the *Brewer* Case. In order to bring a case within the holding of the *Brewer* Case so that public law 906 and the comments incident thereto have any bearing upon it the case must be one in which the Commission has made findings based upon competent, material and relevant evidence that the intrastate use of punch boards to distribute merchandise "*In consequence of the popular appeal of games of chance, much trade is diverted from these dealers, manufacturers and wholesalers, to competitors who do not supply such lotteries or games of chance*" and all of the other facts set out in the *Brewer* Case. The necessity of such proof before the case can be controlled by an application of public law 906 is self evident because Congress certainly would not be interested in stopping the shipment of punch boards in interstate commerce if their use did not amount to unfair methods of competition or unfair acts or practices. It is also fundamental that the provision of said statute and the referred to comments in the enactment thereof pertain only to cases that come strictly within the *Brewer* Case.

The remarks and reference to the *Brewer* and *Keppel* cases in public law 906 are limited strictly to cases wherein the evidence, after the parties to the proceedings have been afforded a full and complete opportunity to introduce their evidence, establishes the fact that the use of punch boards is an unfair act or practice or an unfair method of competition. Congress in reference to these two cases was of the opinion that the holdings in these cases are confined, as we have set out above, to cases wherein

the furnishing of the punch boards is aiding, abetting, inducing and procuring others to use unfair methods of competition or unfair acts and practices; further, Congress by such reference did not intend to imply that the Commission could stop the interstate shipment of punch boards to people who in turn did not use them to engage in unfair methods of competition or unfair acts and practices; in other words, it is certain that Congress understood that the two cases referred to hold that the order therein prohibited only the interstate shipment of punch boards which in turn were used by people in such a manner that competitors of said persons were placed in the position where they were compelled to use punch boards or lose a substantial volume of business.

Before leaving a discussion of public law 906 let us make the following comment. The fact that Congress, after due consideration concerning the Commission's jurisdiction over punch boards, did not include within the act a prohibition of the interstate shipment of them is conclusive that Congress did not intend and this Court in the *Lichtenstein* Case held that the Commission does not have power to prohibit the interstate shipment of punch boards on the sole ground that they are lottery devices.

Therefore the facts which the petitioners wish to establish by their proffered testimony are clearly competent, relevant and material. This being true, the Commission's refusal to allow them to prove these facts certainly deprived them of their constitutional right of due process of law.

In this connection with the strictness in the application of Public Law 906 it is well to call the Court's attention to that which the United States Supreme Court had to say in

this regard in the Case of *Reilly, Postmaster* v. *Pinkus,* 338 U. S. 269 at 277:

> "It is not amiss to point out that the Federal Trade Commission does have authority to issue cease-and-desist orders in cases like this without findings of fraud. * * * But that remedy does not approach the severity of a mail fraud order. In *Federal Trade Commission* v. *Raladam Co.,* 316 U. S. 149, for instance, a business advertising its anti-fat product with extravagant statements similar in many respects to those the respondent here was ordered to cease and desist from making such statements. Except for this, the business was left free to sell its product as before. Unlike the Postmaster General, the Federal Trade Commission cannot bar an offender from using the mails, an order which could wholly destroy a business. * * * The strikingly different consequences of the orders issued by the two agencies on the basis of analogous misrepresentations emphasize the importance of limiting Post-office Department orders to instances where actual fraud is clearly proved."

The order in the case at bar does exactly that which the Supreme Court says the Commission cannot do; the Commission's order bars the petitioners from using the mails and all other forms of interstate transportation to distribute their punch boards in interstate commerce and in addition the order also wholly destroys their business. As is pointed out by the Supreme Court, there is a marked difference between cases wherein, as in the *Raladam* Case, the order simply restrains the use of some unfair method or act leaving the business free to sell its product as before and cases wherein the order restrains the selling of the product, as it does in the case at bar, thereby wholly destroying the business. The purpose of citing the above case at this point is to establish that the Supreme Court has laid down the following two principles of law; the first

of which is, that before a court will sustain an administrative order which is so severe that the order could wholly destroy a business, as it does in the case at bar, the very strictest interpretation and application of all principles of law and rules of statutory construction must be adhered to; the second one of these principles is that the Supreme Court has held that the Commission cannot issue an order which could wholly destroy a business. Bearing in mind these two principles, let us emphasize the importance of the holding in the *Brewer* Case that the findings of fact as set out therein are absolutely essential to sustain a cease and desist order and the further holding that such facts are subject to proof to the extent that the Commission must introduce enough competent, relevant and material evidence to sustain such findings and the petitioners must be granted a full and complete opportunity to introduce their evidence to show facts which will negative such findings, so that if the Commission should insist upon making such finding the petitioners could present to a court the proposition that such findings are not supported by the evidence.

The Contention That The Findings Are Supported by the Evidence Is Out of Order in this Case because the Petitioners Were Not Granted A Fair and Impartial Hearing.

The Commission makes the statement that the petitioners are not now contending that the findings herein are not supported by the evidence. We have two comments to make on this contention. The first one is that it impliedly admits that such findings are essential and that they are subject to proof. The second comment is that at one time, as will be seen from our statement of point, petitioners were going to raise this question. However, upon further consideration petitioners came to the conclusion

that such a contention is not to be presented to a court until the petitioners have been granted the opportunity to introduce their rebuttal evidence. In other words, the Commission has no ground to contend that the findings are supported by evidence until the petitioners have had a full opportunity to introduce and make a part of the record the evidence bearing upon these findings. It is fundamental that the question of the sufficiency of the evidence to support findings is not a question to be presented until it is established that the hearing granted complied completely and strictly with due process of law and the administrative procedure act. Therefore, petitioners contend that the Commission's statement that the petitioners do not raise the question that the findings are not supported by the evidence is clearly out of order.

Commission's Plea for Additional Jurisdiction Is Based Upon an Erroneous Assumption.

In addition it seems to the petitioners that the Commission's condemnation of the use of punch boards to distribute merchandise in intrastate commerce is based upon an erroneous assumption by the Commission that such transactions are of such a magnitude that this court should go to great length in granting the Commission power to stop this type of transaction. All that the Commission says on this point is steeped in irony. This statement is based upon the facts that the Commission refused to allow the petitioners to introduce evidence concerning these transactions which evidence petitioners contend will establish beyond all doubt that the said transactions are not of the nature or type to constitute them unfair methods of competition or unfair acts and practices within the meaning and intent of the F.T.C. Act.

This emotional appeal made by the Commission is certainly based upon an assumption which assumption the

petitioners' evidence would show is false and unfounded. From this it is self evident that this argument and statements of the Commission clearly establishes the importance of allowing the petitioners to introduce their evidence. It is axiomatic that if this assumption which the Commission has based its entire argument upon is fallacious and contrary to the true facts of the case, this court should not hesitate in setting aside the order. As the petitioners' evidence would prove the falsity of the assumption, it is self evident that the Commission in denying the petitioners the opportunity to introduce their evidence deprives them of having a fair and impartial hearing, which is clearly a violation of the due process clause of the Constitution and the Administrative Procedure Act.

The cases cited by the Commission in this emotional appeal are all dealing with lotteries, most of which are giving money as prizes and deal with that type of lottery exclusively, wherein a great number of lottery tickets are sold over a large extent of territory. What is true of these lotteries the petitioners' evidence would establish is not present in the use of punch boards.

Petitioners would not use the word "irony" if it were not for the fact that the Commission's plea for this additional power is limited strictly to the shipment and use of punch boards. If the Commission was endeavoring to acquire jurisdiction over all forms of lottery and gambling devices, then there would be no irony in their position. However, for the Commission to make such a plea when it is realized that they shut their eyes entirely to the interstate shipment of all other forms of lottery and gambling devices, such as slot machines, dice, roulette wheels, bingo and keno paraphernalia, etc. and center their entire attack upon the type of punch boards which are used exclusively to distribute merchandise, it seems to the petitioners that the word "irony" is appropriate.

This is especially true in the light of the fact that Congress in public law 906 provided for an exception to that law where the use of the instrumentalities, slot machines, are legal by local authorities, whereas the Commission's contention is that they should have the power to prevent the interstate shipment of punch boards even in the states wherein their use is legal. Petitioners feel that the irony of the situation is well illustrated in the fact that the Commission stands by with regard to the shipment of all gambling and lottery devices into the State of Nevada but contends that they should have jurisdiction to prohibit the shipment of punch boards into said state. Before concluding this point, let us set out two other ideas; the first is, that unless the use of punch boards is either unfair to competitors or the people who use them there is no basis for the Commission's plea for authority. In other words, the Commission's plea for jurisdiction is based upon the fact that it contends that the use of these punch boards to distribute merchandise is an unfair method of competition or an unfair act of practice. They contend that there is an irrebuttable presumption that the use of punch boards is an unfair method of competition or unfair act of practice while on the other hand the petitioners contend that whether or not the use is unfair is subject to proof and therefore they have a right to introduce their evidence to establish the nature of such transactions. The second idea is, that the Commission contends and the Sixth Circuit held that the use of punch boards even though such use is intrastate is against the public policy of the United States. Wherein the irony of this contention comes in is this; that the Commission does not contend that any other intrastate form of lottery or gambling is against the public policy of the United States. In addition the Commission even contends that the use of punch boards is against the public policy of the United

States even though it has been declared by local authorities that the use of them is not against the public policy of the State or local authorities. In other words, the Commission says, even though the State Legislature or some other local authority says that within the borders of such local authority the use of punch boards is not against the public policy of said state, the Commission contends that they are still against the public policy of the United States. This position is not only contrary to a policy that Congress has always adopted but it is in direct conflict with the Tenth amendment of the constitution reserving the police power to the states.

Petitioners' Punch Boards Are Not Per Se Lottery or Gambling Devices.

That which the Commission states on page 18 in its brief concerning the questions being on the tickets is clearly out of order for two reasons; first, the Commission should not characterize in such a manner as it does the use of punch boards wherein questions are printed upon the tickets until the petitioners have been afforded the opportunity of introducing their evidence concerning the use of these boards; second, the cases cited on page 24 of petitioner's brief involving the use of the question and answer theory were all decided long before the F.T.C. instituted any proceedings of this nature so that the Commission's characterization of this type of punch board *"as a new type of punch board"* is clearly inaccurate.

Petitioners contend that they are entitled to introduce evidence showing all the surrounding circumstances concerning the use of punch boards in a legal manner. Until this opportunity has been afforded them, it is their contention that they have not been granted a fair and impartial hearing.

At this point we wish to call the Court's attention to the fact that all of the Commission's exhibits, which are punch boards, will establish that all the boards made by the petitioners have the questions printed on the back of the tickets, that is, the slips of papers in the holes. If there is any question about this the Court can punch out some of the slips of paper.

At this point the petitioners would like to call the Court's attention to the fact that a bill was introduced in the 82nd Congress to prohibit, among other things, the interstate shipment of punch boards. This bill, while being reported out of a Senate Committee, has not even passed the senate and it seems safe to say that at this late date there is no possibility that it will be passed and become a law. This should be conclusive evidence that Congress does not regard the interstate shipment of punch boards as a thing which the Government, either by an Act of Congress or through any administrative agency, should prohibit. The main point the petitioners have for calling the Court's attention to this bill is that the bill provides as follows:

> "(d) For the purposes of this section the phrase punch board or push card * * * shall not include devices numerically keyed to an answer sheet * * *."

An Analysis of the Brewer Case With the Reilly Case Will Show the Necessity of a Strict Construction of the Brewer Case.

An analysis of the holding in the *Brewer* Case with the holding in the Case of *Reilly, Postmaster* v. *Pinkus,* 338 U. S. 269 at 277, will show that the order in this case must be limited to restraining the petitioners from *"aiding and abetting, inducing and procuring manufacturers and wholesale and retail dealers in merchandise to use unfair or deceptive acts or practices and unfair methods*

of competition." The holding in the *Brewer* Case is limited to the proposition that the petitioners' unfair acts and practices which can be restrained are only the acts and practices which amount to aiding, abetting, inducing and procuring others to use unfair or deceptive acts or practices and unfair methods of competition. It must be noticed and emphasized that the Court in the *Brewer* Case did not hold that aiding and abetting alone is sufficient, the Court inserted the words "inducing and procuring." Under such wording as this the mere aiding and abetting is not sufficient to give the Commission jurisdiction herein but there must be a positive showing that the acts complained of in addition to aiding and abetting, induce and procure. The petitioners proffered evidence would establish beyond doubt that the petitioners' acts certainly do not induce or procure manufacturers, wholesalers and retailers in merchandise to use unfair or deceptive acts or practices and unfair methods of competition.

Applying the holding in the *Reilly* v. *Pinkus* Case to the above announced principle of law, it is self evident that the order must be confined to an order restraining the petitioners from aiding, abetting, procuring and inducing manufacturers, wholesalers and retailers in merchandise to use unfair or deceptive acts or practices and unfair methods of competition. The Supreme Court in the *Pinkus* Case is very emphatic that the Commission cannot issue an order that would wholly destroy the business of the petitioners, which the order herein in its present form certainly does. The Supreme Court also in this case is very emphatic to the effects that the F.T.C.'s authority is limited to restraining the "*use*" of unfair acts or practices and unfair methods of competition and not to the absolute prohibition of the shipment of the merchandise, as the order in the case at bar does.

For the reason hereinabove set forth, the petitioner respectfully requests this court to set aside the order issued herein.

Respectfully submitted,

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